

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

RYAN TIESZEN,  Plaintiff,  vs.  EBAY, INC., LG CHEM LTD, LG CHEM AMERICA, INC., VAPAH, INC., and the FIRST DOE THROUGH THIRTIETH DOE, inclusive,  Defendants.	CIV.21-4002   NOTICE OF REMOVAL
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**TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

YOU ARE HEREBY NOTIFIED that Defendant LG Chem America, Inc. (“LGCAI”), pursuant to 28 U.S.C. §§ 1332, 1441(b), and 1446, and without waiver of any defenses, hereby removes this action, previously pending in the State of South Dakota Second Judicial Circuit Court for the County of Minnehaha, as Case No. 49CIV20-003309, to the United States District Court for the District of South Dakota, Southern Division, on the following grounds:

**I. COMMENCEMENT OF THE ACTION.**

1. On December 1, 2020, Plaintiff Ryan Tieszen filed a Complaint in the State of South Dakota Second Circuit Court for Minnehaha County, Case No. 49CIV20-003309. A true and correct copy of Plaintiff’s Complaint is attached to this notice as Exhibit A.

2. Plaintiff alleges he was injured by “two LG lithium-ion 18650 batteries” that he allegedly purchased on-line from eBay, Inc., on or about August 6, 2016. Compl. ¶ 11.

3. Pursuant to 28 U.S.C. § 1446(c)(3), this diversity action is removed within 30 days of service of the Summons and Complaint upon Defendant LGCAI.

4. Pursuant to 28 U.S.C. § 1446(c)(1), this diversity action is removed within less than one year after the action was commenced.

5. Venue is proper in the United States District Court for the District of South Dakota, Southern Division, as the district and division embracing the place where the action is pending. *See* 28 U.S.C. § 1441(a); *see also* 28 U.S.C. § 84(a).

## **II. THE JURISDICTIONAL REQUIREMENTS FOR REMOVAL ARE SATISFIED.**

6. Removal is proper pursuant to 28 U.S.C. § 1441(b) because this Court has subject matter jurisdiction over this action on the basis that diversity of citizenship exists between the parties, and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(a).

### **A. Diversity of Citizenship Exists.**

7. At all times relevant to this action, Plaintiff was and is a citizen of Sioux Falls, Minnehaha County, State of South Dakota. Complaint ¶ 1.

8. A corporation is a citizen of the state in which it is incorporated and of the state where it has its principal place of business. *See* 28 U.S.C. § 1332(c); *Hertz Corp. v. Friend*, 559 U.S. 77 (2010).

9. Defendant LG Chem, Ltd. (“LG Chem”) is a South Korean company with its headquarters and principal place of business in Seoul, South Korea.

10. Defendant LG Chem America, Inc. (“LGCAI”) is a Delaware-incorporated entity with its principal place of business in the State of Georgia. Compl. ¶ 6.

11. Defendant eBay, Inc. is a corporation organized under the laws of the State of California, with its principal place of business in San Jose, California. Compl. ¶ 2.

12. Defendant Vapah, Inc. is a corporation organized under the laws of the State of Georgia, with its principal place of business in Monroe, Georgia. Compl. ¶ 4.

13. The citizenship of “Doe” defendants is irrelevant in determining whether diversity jurisdiction exists for removal. 28 U.S.C. § 1441(b)(1) (“In determining whether a civil action is

removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.”).

14. Based on the foregoing, diversity of citizenship exists as required by 28 U.S.C. § 1332.

**B. The amount in controversy exceeds \$75,000.**

15. Plaintiff seeks recovery for “serious and substantial injuries, including but not limited to, medical expenses, past and future, lost wages, and conscious pain and suffering, as well as permanent disability and disfigurement, and loss of enjoyment of life,” costs and disbursements, and “other and further relief as the court determines to be just and proper.” Compl. ¶ 110, Prayer for Relief.

16. Where, as here, Plaintiff has not specifically alleged an amount in controversy greater than \$75,000 to satisfy the jurisdictional threshold of 28 U.S.C. § 1332(a), a defendant may assert such amount in controversy in its notice of removal. *See* 28 U.S.C. § 1446(c)(2). The jurisdictional threshold is satisfied by the defendant’s assertion of the amount in controversy if the district court finds, by a preponderance of the evidence, that the amount in controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C. § 1446(c)(2)(B).

17. “[A] defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold,” and if made in good faith, defendant’s allegation is accepted to satisfy the jurisdictional threshold for the amount in controversy. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 553–54 (2014). “Evidence establishing the amount is required by § 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the defendant’s allegation.” *Id.* at 554.

18. Here, LGCAI has a good faith basis to believe, based solely upon the allegations of Plaintiff’s Complaint, that the amount in controversy exceeds \$75,000, exclusive of interest and costs. Therefore, while denying liability and without waiving any defenses, LGCAI asserts and alleges in good faith that the amount in controversy exceeds \$75,000.

19. Based on the foregoing—while LGCAI denies liability and reserves the right to assert any and all defenses—the amount in controversy exceeds the jurisdictional threshold of 28 U.S.C. § 1332.

### III. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED.

20. Pursuant to 28 U.S.C. § 1446(b)(1), this Notice of Removal is timely being filed within 30 days after receipt by Defendant LGCAI, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which the action is based.

21. To the best of Defendant LGCAI's knowledge, at the time of the filing of this Notice of Removal, Defendant eBay, Inc. is the only other named defendant that has been served. Attached hereto as Exhibit B is a copy of the electronic docket from Minnehaha County Circuit Court that relates to this matter as of January 4, 2021, the date of filing this Notice of Removal.

22. Defendant eBay, Inc., through its counsel of record, has consented to the removal of this action. Attached hereto and incorporated herein by reference as Exhibit C is Defendant eBay, Inc.'s Consent to Removal. It is settled Eighth Circuit law that "[W]here there are multiple defendants, all must join in a [notice] to remove within thirty days of service." *Christiansen v. West Branch Community School District*, 674 F.3d 927, 932 (8<sup>th</sup> Cir. 2012), citing *Thorn v. Amalgamated Transit Union*, 304 F.3d 826, 833 (8<sup>th</sup> Cir. 2002). In addition, in the Eighth Circuit, "it is not necessary for all defendants to actually sign the notice of removal so long as there is 'some timely filed written indication from each served defendant . . . that the defendant has actually consented to the removal.'" *Christiansen*, 674 F.3d at 932, quoting *Pritchett v. Cottrell, Inc.*, 512 F.3d 1057, 1062 (8<sup>th</sup> Cir. 2008). Therefore, it is clear that it is not necessary for LGCAI to obtain the consent of the other entities named as defendants in this action at this time. All defendants that are served and enter appearances in this matter will have the opportunity to file written consent to the removal within thirty days of service on that defendant. *Marano Enterprises v. Z-Teca Restaurants, LP*, 254 F.3d 753, 755-757 (8<sup>th</sup> Cir. 2001). Failure of the non-removing defendants (which have not yet been served) to join or consent to the removal of this case does not render



LGCAI's removal petition improper.

23. Pursuant to 28 U.S.C. §1446(a), a copy of all process, pleadings, orders, and other documents served on Defendant LGCAI by Plaintiff are attached hereto. *See Exhibit A.*

24. In accordance with 28 U.S.C. § 1446(d), LGCAI will promptly file a copy of this Notice of Removal with the State of South Dakota Second Judicial Circuit Court for the County of Minnehaha, and serve a copy of the same on counsel for all parties.

25. LGCAI reserves any and all rights to assert any and all defenses and objections, including the defense of lack of personal jurisdiction. LGCAI intends to contest personal jurisdiction in Plaintiff's case and will timely file a motion to dismiss. The removal of a case by a defendant pursuant to 28 U.S.C. § 1332 does not constitute a waiver of the defense of personal jurisdiction by the removing defendant. *WMCV Phase 3, LLC v. Shushok & McCoy, Inc.*, 750 F. Supp. 2d 1180, 1186 (D. Nev. 2010) (citing *Morris & Co. v. Skandinavia Ins. Co.*, 279 U.S. 405, 409 (1929)).

26. WHEREFORE, Defendant LGCAI prays that the above-entitled action be removed from the State of South Dakota Second Judicial Circuit Court for the County of Minnehaha, to the United States District Court for the District of South Dakota, Southern Division.

Dated this 4 day of January, 2021.

CADWELL SANFORD DEIBERT  
& GARRY, LLP

By: 

Stephen C. Landon  
200 East 10<sup>th</sup> Street, Suite 200  
Sioux Falls, SD 57104  
(605) 336-0828  
[slandon@cadlaw.com](mailto:slandon@cadlaw.com)  
Attorneys for Defendant LG  
Chem America, Inc.


CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was served upon the parties hereto as follows:

Steven Siegel  
Heidepriem, Purtell, Siegel & Hinrichs, LLP  
101 West 69<sup>th</sup> Street, Suite 105  
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Steven J. Oberg  
Lynn, Jackson, Shultz & Lebrun, PC  
110 N. Minnesota Ave., Suite 400  
Sioux Falls, SD 57104  
[soberg@lynnjackson.com](mailto:soberg@lynnjackson.com)

by email and by first class United States mail, postage prepaid, this 4 day of January, 2021.

  
\_\_\_\_\_  
Stephen C. Landon

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

Ryan Tieszen

(b) County of Residence of First Listed Plaintiff Sioux Falls, South Dakota  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Steven Seigel, Heidepriem Purzel Siegel & Hinrichs  
101 W. 69th ST, Ste. 105, Sioux Falls, SD 57108  
605-679-4470

## DEFENDANTS

Ebay, Inc.; LG Chem Ltd.; LG Chem America, Inc.;  
Vapah, Inc.; and the first DOE through thirtieth

County of Residence of First Listed Defendant San Jose, California  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Stephen Landon, Cadwell Sanford Deibert & Garry,  
LLP  
200 E. 10th #200 Sioux Falls SD 57104 605-336-0828

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

## V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding  
☒ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from Another District (specify)  
☐ 6 Multidistrict Litigation - Transfer  
☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. § 1446

Brief description of cause:

Product liability action removed pursuant to diversity of citizenship

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$  
N/A

CHECK YES only if demanded in complaint:  
 JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

January 4, 2021

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE